



DISMISSALS

A GUIDE TO DISMISSALS IN THE FAMILY COURT

FAMILY COURT OF THE STATE OF DELAWARE

<https://courts.delaware.gov/family>

If you decide that you no longer wish to proceed with your case, you may file to dismiss your case. *Family Court Civil Rule 41* provides three ways in which you may request that your case be dismissed. ***Please be aware that the type of dismissal you request depends on whether the Respondent(s) has already filed an answer and whether the Respondent(s) agree to the dismissal.***

You filed a Petition and Respondent(s) has not yet filed an answer/entered an appearance*

If you filed a Petition and the Respondent(s) has not yet answered/filed an appearance, you may file a Voluntary Dismissal of Civil Action (Form #297). On this form, you must state the reasons why you want to dismiss your case. A Judge or Commissioner will review the voluntary dismissal. When you receive a signed copy of the Voluntary Dismissal, you should disregard any scheduled hearing for that matter.

You filed a Petition and the Respondent(s) has filed an answer/entered an appearance, but agrees to dismiss the case

If you filed a Petition and the Respondent(s) has filed an answer/entered an appearance, but agrees to dismiss the case, you may file a Stipulation of Dismissal (Form #520). This stipulation must be signed by all parties who have filed a pleading or have come to Court for the case.

You filed a Petition, the Respondent has already filed an answer/entered an appearance and the other party does not agree to dismiss the case.

If you filed a Petition and the Respondent(s) filed an answer/entered an appearance and does not want to dismiss the case, you may file a Motion to Dismiss (Form #197). In this motion, you must state how the Respondent(s) entered an appearance (filing and answer, appearing in court) and why you believe the case should be dismissed despite the objections.

This motion must be served on the Respondent(s). The Respondent(s) will have 13 days from the date of service to reply. The Court will then make a decision. If the Court does not grant your Motion to Dismiss, you must be prepared to continue with the case.

You filed a Petition and the other party filed a counterclaim

If you filed a petition and the respondent(s) filed an answer and counterclaim, you may file a Motion to Dismiss (Form #197) to request that the Court dismiss your case. However, your Motion To Dismiss will not be granted against the objections of the Respondent(s) unless the counterclaim can remain pending for independent adjudication.

*A party may enter their appearance by: filing an answer, serving notice of their appearance on the opposing party or appearing for a Court hearing or mediation. An attorney must enter his or her appearance by filing with the Court form #354 and mailing a copy to the opposing party(ies).

Family Court Rule of Civil Procedure 4I: Dismissal of Actions

(a) Voluntary Dismissal; Effect Thereof.

(1) *By Petitioner; by Stipulation.* An action may be dismissed by the petitioner without order of court (i) by filing a notice of dismissal at any time before entry of appearance by the adverse party or (ii) by filing a stipulation of dismissal signed by all the parties who have appeared in the action.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this Rule, an action shall not be dismissed at the petitioner's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a respondent prior to the service upon respondent of the petitioner's motion to dismiss, the action shall not be dismissed against the respondent's objections unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof. For failure of the petitioner to prosecute or to comply with these Rules or any order of court, a respondent may move for dismissal of an action or of any claim against that respondent. After the petitioner has completed the presentation of evidence, the respondent, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the petitioner has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under [Rule 19](#), operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim or Third-Party Claim. The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this Rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously Dismissed Action. If a petitioner who has once dismissed an action in any court commences an action based upon or including the same claim against the same respondent, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the petitioner has complied with the order.

(e) Dismissal for Failure to Prosecute. In the case of any action which has been pending in this Court for more than 1 year without any proceedings having been taken therein during that year, the Clerk may after the expiration of the 1 year period mail to the parties a notice notifying them that the action will be dismissed by the Court for want of prosecution if no proceedings are taken therein within 30 days. If no proceedings are taken in the action within a period of 30 days after the mailing of such notice, it shall thereupon be dismissed by the Court as of course for want of prosecution. Such actions may also be dismissed for want of prosecution at any time by motion of any party or by the Court on its own motion.